IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1491 OF 2006

Ashok Govind Malushte and anr. .. Petitioners
(Orig.defendants)

V/s.

Arun Manaji Kale .. Respondent
(Orig.plaintiff)

Shri.Jagdish R.Chomal for the petitioners.
None for the respondents.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 9TH FEBRUARY, 2007.

P.C.:

1. Heard Shri.Chomal, learned Advocate appearing for the petitioner-original appellant in Appeal Lodging No.2389 of 2005.

2. The petitioner is the original appellant / defendant in R.A.D.Suit No.845 of 2005. The said R.A.D. Suit is instituted by the respondent-original plaintiff

for declaration and injunction. The suit premises are at Bhuleshwar Road, Mumbai. It is not disputed that the respondent in the said suit applied for injunction vide Injunction Notice (Exh.6). By an order dated 12th July, 2005, the injunction notice was made absolute and an interlocutory order was made in terms thereof in the pending suit.

3. The petitioner-original defendant being aggrieved by this order, preferred an Appeal to the Appellate Bench, Small Causes Court at Mumbai, which appeal has been dismissed only for non removal of office objections.

4. Shri.Chomal, appearing in support of this petition, submits that this is a fit case for invoking this Court's jurisdiction under Article 227 of the Constitution of India in as much as the Appellate Bench ought to have appreciated that the petitioner had gone to the Registry of Small Causes Court on several occassions to remove office objections but could not do so for the reasons set out in Para 5 and 6 of this petition.

5. He submits that the petitioners had been not afforded any opportunity of whatsoever nature to argue the appeal. Even the application for condonation of delay

could not be made because the appeal stands dismissed for non-removal of office objections. He submits that the order under challenge could have easily been recalled by the Appellate Bench, but its refusal has resulted in serious loss and prejudice so also grave miscarriage of justice.

6. Shri.Chomal states that the petitioners-appellants would remove all office objections within a period of ten days from today and if they do so, the appeal be directed to be numbered. He submits that no prejudice would be caused by this course to the other side. The other side would be in a position to oppose the application for condonation of delay so also the appeal on merits if the delay stands condoned.

7. In the light of the fact that the appeal is dismissed by the Appellate Bench only because the office objections were not removed, the matter is between the Appellate Bench and the appellants/petitioners before me alone. In such peculiar circumstances and in the light of the statement made by Shri.Chomal before me, it would be fit and appropriate so also in the interest of justice if the impugned order is set aside.

8. Accordingly, the impugned order is set aside on the condition that the petitioners-original appellants should remove the office objections in Appeal Lodging No.2389 of 2005 within a period of ten days from today. If the said steps are taken, the Registry of the Small Causes Court to number the appeal. Thereafter, it would be open for the petitioners to apply for condonation of delay in filing of the said appeal and such application and proceedings to be decided by the Appellate Bench in accordance with law after giving due opportunity to the respondent. While doing so, the Appellate Bench not to be influenced by the order passed by this Court.

9. Needless to state that if the petitioners - appellants do not remove the office objections within the time stipulated above, the impugned order stands confirmed and thereupon, the appeal to stand dismissed as directed therein.

10. All concerned to act upon an authenticated copy of this order. No order as to costs.

(S.C.Dharmadhikari, J.)